IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1070 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as JJJJ : NO

JJJJ

Date of decision: 16/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Heard learned advocate Shri P.V. Nanavaty for the appellant insurance company and learned advocate Shri Mehul S. Shah for respondents Nos. 1 to 6 on caveat.

2. Admit. Learned advocate Shri Mehul Shah waives services for respondents Nos. 1 to 6. Learned advocate Shri Nanavaty seeks permission to delete respondents Nos. 7, 8 and 9 at this stage as their presence is not required in the present proceedings.

3. Being aggrieved by an award dated 13.10.2000 passed below Ex. 6 in M.A.C.P. No. 107/2000, this appeal has been filed by the appellant insurance company. By virtue of the impugned award, it has been directed that the appellant insurance company should deposit a sum of Rs. 4,24,500/- with running interest thereon at the rate of 12% from the date of filing of the main claim petition till the date of the deposit and necessary directions have also been given for the purpose of payment and deposit of the amount of compensation.

4. Learned advocate Shri Nanavaty appearing for the appellant insurance company has submitted that the impugned award is not just and proper because before determining the amount of award, the Tribunal has not properly appreciated the evidence which has been adduced before it by way of affidavits. The amount of compensation which has been determined is on much higher side. It has been submitted by him that there was no justifiable basis for the Tribunal to come to the conclusion that monthly income of the deceased was Rs. 9,000/- . It has been further submitted by him that the claimants have also filed an application under the provisions of sec. 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act) and the claimants are not likely to get even the amount awarded under this award in the main application which has been filed under the provisions of sec. 166 of the Act. It ha been submitted by him that after getting the amount which has already been awarded there are all chances that the respondents-claimants might not pursue the application which has been filed under the provisions of sec. 166 of the Act and in that case it would be very difficult for the appellant insurance company to recover the amount which might have been withdrawn by the respondents-claimants.

5. On the other hand, learned advocate Shri Mehul Shah appearing for the original claimants has submitted that the amount which has been awarded is as per the provisions of Schedule II of the Act and it is absolutely reasonable. Looking to the facts of the case, the Tribunal has rightly awarded a sum of Rs. 4,24,500/-. It has been further submitted by him that the claimants are really interested in pursuing the application which has been filed under sec. 166 of the Act for the reason that they are hopeful of getting more compensation than what has been awarded under the impugned award. He has shown willingness of the claimants for filing an undertaking to the effect that the present respondents shall neither withdraw the main claim petition nor they would permit the said claim petition to be dismissed for default. He has submitted that as the amount which has been awarded is just and proper, the respondents should be permitted to withdraw the amount as directed by the Tribunal.

6. We have heard the learned advocates at length. Looking to the facts of the case, in our opinion, this appeal can be disposed of in the following manner.

The Tribunal has already directed the claimants to file an undertaking within 4 weeks from 13.10.2000 to the effect that they would pursue the main claim petition and they would neither withdraw the main petition nor would they permit the main claim petition to be disposed of for default. If such an undertaking has not been filed by the claimants till today, they shall file the same immediately and in any case within 4 weeks from today. The appellant insurance company shall deposit the amount awarded within 6 weeks from today. The amount which is to be paid immediately to the claimants shall be paid by account payee cheques and the balance amount which has been directed to be deposited shall be deposited with a nationalised bank in the name of the claimants as well as the Nazir of the court and no amount shall be permitted to be borrowed on the security of the fixed deposit. The Fixed Deposit Receipts shall remain in the custody of the Nazir. The interest which might accrue on the said deposit shall be permitted to be withdrawn by the claimants. The amount which has been deposited by the appellant with this court shall be transmitted to the Tribunal forthwith.

7. The learned advocates have assured this court that their respective clients shall extend full co-operation to the Tribunal so that M.A.C.P. No.

107/2000 can be disposed of at an early date.

8. In view of the above directions, the appeal stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(J.R. Vora, J.)

(hn)